

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	CC Docket No. 96-45
Federal-State Joint Board on Universal Service	

**Reply Comments on Joint Board Recommended Decision by
Vermont Public Service Board**

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**1. THE GAO STUDY SHOWS THAT URBAN AND RURAL RATES CHARGED
BY NONRURAL CARRIERS ARE NOT COMPARABLE.**

AT&T criticized Commissioner Rowe's dissent on several grounds related to the General Accounting Office Study. Ultimately, however, AT&T's criticism fails to disprove Commissioner Rowe's general conclusions regarding the General Accounting Office Study.

A large part of the problem is the linguistic confusion created when the adjective "rural" is used to characterize both certain places and certain telephone companies. The concepts are

quite different, but their linguistic similarity breeds confusion. It is important to distinguish the two, even though precise language sounds redundant. With that distinction in mind, the central issue in this proceeding is whether the rates of rural customers served by large nonrural carriers under the Ninth Report and Order are reasonably comparable to the rates of urban customers in the nation (or possibly of urban customers of nonrural carriers, since that is largely the same thing).

AT&T challenged Commissioner Rowe's expressed concern about the inclusion of rural rate data for areas served by small rural telephone companies.¹ But AT&T's objection overlooks the central fact that the GAO report is based on rate data for rural areas served by small rural companies.² The Commission cannot assume that rates in rural areas served by large nonrural companies are the same as rates in rural areas served by small rural carriers.

The problem can be illustrated by an analogy, here translated into the conventional metaphor of "apples and oranges." AT&T asserts that the GAO study shows that rates in urban, suburban and rural areas (called "non-MSA" by GAO) served by nonrural carriers all have the same mean and standard deviation. Analogizing to green, yellow and red apples, AT&T asserts that a study shows that a sample box of green apples, another box of yellow apples, and a third box of red apples all are similar as to average weight and weight distribution. But the central problem is that the third box contains not only red apples but also an unknown number of oranges. Clearly one cannot draw a valid conclusion solely from this data about the average weight of red apples. Similarly, the GAO study includes rural rate data for areas served by *both*

¹ AT&T offers a quote from the GAO report itself, stating that GAO had "only included central city and suburban places that were served by local telephone companies identified by the FCC as non-rural carriers." AT&T Comments at 5.

large nonrural companies and small rural companies. The Commission cannot assume that red apples and oranges weigh the same. Similarly, it cannot assume that rates in rural areas served by large nonrural companies are the same as rates in rural areas served by small rural carriers. Without that assumption, the GAO study proves nothing in this proceeding. The rural average could be hiding the fact that rural companies have generally lower rates in rural areas than nonrural companies serving rural areas. Neither the GAO, the Joint Board, nor AT&T has apparently examined this possibility.

AT&T also confuses the purpose of section 254. AT&T asserts that “[r]ural rates do not vary more widely than urban rates, and therefore the GAO Report’s methodology does not hide variations that might constitute a problem under Section 254.”³ This misconstrues the statute. Section 254 was designed to protect *all* rural areas, not the average rural area. Despite its research into Congressional history, AT&T provides no evidence whatever that Congress intended that some rural areas may have high rates so long as other rural areas have low rates. Indeed, high rural rates in one state would violate section 254, even if it were shown that all rural areas, considered as a whole do not have a problem.⁴ Nor is it a defense that some urban areas also have high rates. It is not the Commission’s task, as AT&T asserts, to “compare the typical rural rate with the typical urban rate.”⁵ Rather, the Commission’s task is to establish a system under which no rural customer has rates above the level that is reasonably comparable to the average urban rate.

² AT&T itself concedes this fact by noting that the GAO study “generally sampled three rural places in each state [including] one served by a rural carrier.” *Id.*

³ AT&T Comments at 4.

⁴ Of course this presupposes that the Commission can solve the earlier identified problem and consider solely rural rate data for carriers who receive support controlled by this proceeding.

AT&T notes that the GAO study results were statistically valid at the 95 percent level.⁶ Vermont does not disagree. However, once again, AT&T wrongly takes comfort from national averages. The GAO study does show that, taken as a whole, all rural areas have rates that are similar to all urban areas, taken as a whole. That, however, is not the point of section 254, which provides protection to *all* rural areas (or at minimum all rural states), not in the aggregate or on the average, or even the “vast majority,”⁷ but individually. The GAO study does reliably establish a fact, but that fact has no use here.

AT&T criticizes Commissioner Rowe for comparing rates in Roaring Springs, Texas with rates in Wyoming and Vermont.⁸ Certainly a single anecdote does not *prove* a point; however it can *illustrate* it.⁹ Since rural areas are the intended benefited class under section 254, there is nothing amiss in comparing a particular rural area or particular rural state with the national urban average.

It takes but little effort to find in the GAO report a more general illustration of the problem identified by Commissioner Rowe. The GAO report shows average residential rates in Vermont at approximately \$24.60.¹⁰ In Wyoming, average residential rates were approximately \$30.30.¹¹ Neither is reasonably comparable to the reported national urban average of \$14.79.¹² While Commissioner Rowe’s example may have been too specific, his conclusion remains valid.

⁵ AT&T Comments at 4-5.

⁶ AT&T Comments at 6.

⁷ AT&T Comments at 5.

⁸ AT&T Comments at 5-6; see also AT&T footnote 7.

⁹ AT&T’s criticism did, however, take Commissioner Rowe’s comment out of context. Commissioner Rowe cited Roaring Springs, Texas as an illustration of state-to-state rate variation, not of urban to rural rate variation.

¹⁰ GAO report at 57-58. This calculation gives all data points given equal weight.

¹¹ GAO report at 58. This calculation gives all data points given equal weight.

The GAO study shows that in some rural parts of the country the rates paid by the customers of nonrural carriers are not reasonably comparable to urban rates.

2. CONGRESS INTENDED SECTION 254 TO SOLVE BOTH PRESENT AND FUTURE UNIVERSAL SERVICE PROBLEMS.

AT&T asserts that Congress believed that rural and urban rates were already reasonably comparable at the time of the enactment of the 1996 Act.”¹³ Similarly, Verizon asserts that “when Congress passed the 1996 Act, it intended to maintain the reasonable comparability of urban and rural rates that existed at that time in the face of the increase in local competition that would be created by the Act.”¹⁴ Likewise, the California Public Utilities Commission (CPUC) asserts that “‘reasonably comparable’ in the context of section 254(b) means that federal support be sufficient to maintain the range of rates existing at the time the 1996 Act was adopted.”¹⁵

AT&T, Verizon and the CPUC essentially assert that universal service faced no significant issues in 1996 regarding the fairness of the existing support system. Under this “Garden of Eden” theory, the *sole* purpose of section 254 was to provide a tool in anticipation of possible future harm from local rate deaveraging.

Before 1996 many urban customers provided, through rate averaging, implicit support to rural customers served by the same carrier in the same state. Congress did anticipate that competition would drive out such “subsidies” and force carriers to deaverage local rates. But the detailed mechanism by which this might occur is important. It was anticipated that incumbent

¹²AT&T Comments at fn 4.

¹³ AT&T Comments at 8.

¹⁴ Verizon Comments at 8.

¹⁵ California Public Utilities Commission Comments at 8.

carriers would file new tariffs with state commissions that reduced local exchange rates in urban areas and increase them in rural areas. In other words, it anticipated intrastate rate changes.

But if competition would drive some rates up, it would also drive some rates down, and neither average costs nor rates would change. States could respond by establishing its own internal universal service funds, and several states operated such funds in 1996.¹⁶ If any doubt remained about their legality, section 254(f) resolved that question. A state fund would make explicit the support that previously had been implicit; but like deaveraging, it would increase some overall rates for some customers and decrease them for others. But a state fund would not alter the statewide average rates either. Neither deaveraging nor a state fund could have been expected to change the state's average cost or its average rates.

The Garden of Eden theory fails to explain why any of this would require the FCC to receive explicit authority to grant more federal support to carriers. If Congress was *solely* concerned about future intrastate rate shifts, Congress had no reason to give the Commission new authority to accomplish interstate transfers. In a low-cost state, there would have been no problem for federal support to solve. The state could have taken care of its own needs internally, and without undue strain, using state ratemaking statutes, special enactments by the state legislature or subsection 254(f). The case is virtually the same for a high-cost state.¹⁷ If existing rate disparities were ratified in 1996, there was no reason to believe that subsequent intrastate deaveraging would increase the need for federal support. In other words, the Garden of Eden theory cannot explain, for any state, why section 254 authorized increased federal support to high cost areas.

¹⁶ Vermont enacted a state universal service fund into law in 1994. VT. STAT ANN. tit. 30, §§ 7501-25 (2000).

Far less would Congress have needed some of the other provisions of section 254. If rate disparities were judged acceptable in 1996, it is difficult to understand why Congress has given the Joint Board a specific and demanding timetable in subsection 254(a). It is also difficult to understand why Congress would have included detailed standards in section 254(b) that require, among other things, reasonable comparability between urban and rural rates. Also, the Act requires the Commission and the Joint Board to take actions for the “preservation and advancement” of universal service.¹⁸ By “preservation,” the Commission should perhaps understand an intent to ratify and protect the kind of high cost support programs that were in effect, with the advice of the Separations Joint Board, before 1996. But what did the Congress intend by including the word “advancement?” AT&T, Verizon and the CPUC offer no answer to these questions.

But “advancement” can be explained by the Commission’s existing support program. Like the loop support program it replaced, the current program for nonrural carriers was designed to address state-to-state cost differences and not intrastate rate increases caused by deaveraging. As the commission previously found, federal support is needed only where a state’s average cost is high, so that the state cannot provide for itself.¹⁹ The existing high-cost support mechanism for nonrural carriers, based on the forward-looking cost model, is based entirely on the premise that some high-cost states need federal help that they cannot provide

¹⁷ The difference is that AT&T, Verizon and the CPUC assumes there was no need for incremental federal support in 1996. Vermont disagrees.

¹⁸ 47 U.S.C. § 254(b).

¹⁹ *Federal State Joint Board on Universal Service*, Seventh Report and Order, May 28, 1999, para. 48 (“the methodology should rely primarily on states to achieve reasonably comparable rates within their borders, while providing support for above-average costs to the extent that such costs prevent the state from enabling reasonable comparability of rates”); Ninth Report and Order, Nov. 2, 1999, para. 45 (“By averaging costs at the statewide

themselves without imposing unreasonably high rates. This program is incompatible with the Garden of Eden theory.

The second major problem is that in 1996 universal service was not yet a Garden of Eden. AT&T, Verizon and the CPUC would have the Commission believe that Congress recognized no question in 1995 about the adequacy of support to high cost areas. This denies the historic record of challenges to whether existing support was sufficient. Due in part to Vermont's efforts, the sufficiency of support to nonrural carriers in rural states has been before the Commission since well before the passage of the 1996 Act.

In 1993, the Commission's pre-Act loop support plan arbitrarily created a dividing line at 200,000 lines. Smaller companies received generous loop support, but larger companies received much less support.²⁰ Vermont's large carrier, with barely more than 200,000 lines at the time, received several dollars per month less support than it would have received if the carrier had only slightly fewer lines. In September of 1993, the Vermont Public Service Board and Vermont Department of Public Service filed a petition with the Commission. The petition asked for a waiver to allow Vermont to receive support equal to what would have been available if New England Telephone (Verizon's predecessor in Vermont) had fewer than 200,000 lines.²¹ The Commission never acted on Vermont's petition.²²

level, the federal mechanism is designed to achieve reasonable comparability of intrastate rates among states based solely on the interstate transfer of funds.”)

²⁰ The vestiges of this division are still to be found in the Commission's rules. 47 C.F.R. § 36.631(c) and (d).

²¹ *In the Matter of Waiver of Section 36.631 of the Commission's Rules Governing the Universal Service Fund*, Petition for Waiver of the Vermont Department of Public Service and the Vermont Public Service Board, (AAD-93-103), filed September, 1993.

²² Vermont's original petition became technically moot when the Commission shifted what is now Verizon-Vermont from a system based on the dichotomy between large and small companies to a different system based on a dichotomy between rural and nonrural carriers. However, the fundamental issue, whether support for rural customers in Vermont is sufficient, remains constant over the entire period of almost ten years.

Instead the Commission and the Separations Joint Board undertook a series of broad policy reviews. First came a Notice of Inquiry in 1994.²³ Then in 1995 came a Notice of Proposed Rulemaking and referral to the Joint Board. The 1995 notice explicitly asked whether the Commission should reconsider its rules that gave “significantly preferential treatment” to study areas with 200,000 or fewer loops and whether the distinction between large and small study areas should be eliminated.²⁴ Vermont’s petition and the comprehensive review were both pending when the Telecommunications Act of 1996 was enacted.

In summary, when the 1996 Act passed, the Commission and the Joint Board had under consideration a variety of proceedings involving support for the rural customers of nonrural carriers. By passing the Act, Congress ended this uncertainty and provided definite standards for universal service. The Act transferred the pending issue from the 80-286 Separations Joint Board to the newly created Universal Service Joint Board.

The Act also established a new framework of policies in section 254(b) upon which to base future universal service programs. By adding a requirement that support be sufficient to provide “reasonably comparable” rates, section 254(b)(3) solidified and expanded the high cost fund that existed prior to the Act. By providing a requirement that support be sufficient, Congress made sure that the Commission could not simply overlook its universal service obligations.

The Act provides the basis to address the known inadequacies of the pre-1996 high cost support mechanism, including the absence of sufficient support to achieve reasonably comparable rates for the customers of some large nonrural carriers. Accordingly, section 254

²³ *Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board*, Notice of Inquiry, 9 FCC Rcd 7404 (August, 1994).

²⁴ *Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board*, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 95-282, 10 FCC Rcd 12309, paras. 40-44 (July 13, 1995).

should be read as a Congressional decision to resolve all the universal service questions that were under consideration at the time, and not merely as an insurance policy against the future effects of competition.

AT&T, Verizon and the CPUC are asking the Commission to rewrite section 254 in a way that minimizes the obligations of payors, but at the price of shortchanging the intended beneficiaries. The Commission should reject the Garden of Eden theory and rule that section 254 was intended to solve both existing and future universal service problems.

Dated at Montpelier, Vermont, this 17th day of January, 2003.

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Certificate of Service

I, Brenda Chamberlin, hereby certify that on the 17th day of January, 2003, I caused true and correct copies of the preceding Comments of the Vermont Public Service Board to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: January 17, 2003 at Montpelier, Vermont

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